**INTERGOVERNMENTAL LAND TRANSFER AGREEMENT BETWEEN**

**KING COUNTY AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES**

**Relating to the Ownership and Management of Little Si Natural Area**

This Agreement is made and entered into this day by and between the State of Washington, acting by and through the Department of Natural Resources, hereinafter called "WADNR", and King County, hereinafter called "County".

WHEREAS, the County, under the authority of Revised Code of Washington (RCW) 36.89.050, King County Resolution 34571 and other federal, state and county laws, acquired and developed a substantial park, recreation and open space system that depends on the continued operation of its many individual properties and facilities in order to fully serve the needs of the residents of King County and the cities within it; and

WHEREAS the County is legally restricted from converting many of these parks, open space, and recreational facilities from their current uses without expending funds to replace the converted facilities; and

WHEREAS given the legal restriction regarding conversion of the properties, the marketability of the properties is limited and, as a result, the cost of operating the facility or maintaining the property is approximately equal to the value of the property to the County; and

WHEREAS, under its Conservation Futures Program, King County purchased the 28.22-acre Little Si Natural Area, located east of the City of North Bend in unincorporated King County and within the approved boundary of and, therefore, eligible for inclusion in the Mount Si Natural Resources Conservation Area (NRCA), managed by the WADNR; and

WHEREAS, Little Si Natural Area was purchased to protect the forest adjacent to the Mount Si NRCA, and at the time of purchase King County Ordinance 7736 documented the express intent to transfer Little Si Natural Area to WADNR to manage along with the Mount Si NRCA; and

WHEREAS, the King County Department of Natural Resource and Parks has determined that it will be more efficient for WADNR to manage Little Si Natural Area as part of the Mount Si NRCA; and

WHEREAS, Pursuant to RCW Chapter 39.33 and King County Code (K.C.C.) Chapter 4.56.140, King County may sell, transfer, exchange, lease or otherwise dispose of any real property to the State of Washington on such terms and conditions as may be mutually agreed upon by the proper authorities of the County and the State; and

WHEREAS, Pursuant to K.C.C.4.56, prior to the public sale or trade of County-owned property, the Facilities Management Division must first determine whether any other County department has a need for the property for government services; and

WHEREAS, on October 10, 2007, the King County Facilities Management Division formally declared Little Si Natural Area as surplus to County’s needs; and

WHEREAS, the WADNR, which manages Natural Resources Conservation Areas to protect native ecosystems, habitat for endangered, threatened and sensitive species, scenic landscapes and to provide opportunities for environmental education and low impact public use, has agreed to take title to and to manage the Little Si Natural Area as part of the Mount Si NRCA pursuant to RCW 79.71;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, WADNR and the County agree as follows:

1. **Conveyance of Title**
   1. Within thirty (30) days of execution of this Agreement, King County shall convey to WADNR by Bargain and Sale Deed, all its ownership interest, and/or, when possible, by assignment, any leasehold interest or shared use responsibility, in the following listed park/recreation site(s), which are described more fully in Exhibits A and B (the "Property"):

Little Si Natural Area

1.2 All deeds shall also contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system. The County and WADNR agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:

"WADNR acknowledges that the Property was purchased for open space purposes with Conservation Futures funds as authorized by King County Ordinances 10750 and 13717 and covenants that the Property will continue to be used for the purposes contemplated by these Ordinances, which prohibit both active recreation and motorized recreation such as off-road recreational vehicles but allow passive recreation, consistent with use and management in perpetuity as an NRCA under Chapter 79.71 RCW; that the Property shall not be transferred or conveyed except by agreement providing that the Property shall continue to be used for the purposes contemplated by these Ordinances and that the Property shall not be converted to a different use unless other equivalent lands and/or facilities within the County shall be received in replacement therefore."

"WADNR covenants that it shall place the preceding covenants in any deed transferring the Property or a portion of the Property for public park, recreation or open space uses."

1.3 The effective date of conveyance shall be the date upon which the deed conveying the Property to WADNR is recorded.

**2. Existing Restrictions, Agreements, Contracts or Permits**

2.1 WADNR shall abide by and enforce all terms, conditions, reservations, restrictions and covenants of title referenced herein at the time of conveyance and/or in the deed of conveyance.

3. Condition of Premises and Responsibility for Operations, Maintenance, Repairs, Improvements, and Recreation Services

3.1 WADNR has inspected and knows the condition of the Property and agrees to accept the Property in AS IS condition, and to assume full and complete responsibility for management of the Property.

3.2 King County does not make any warranty of merchantability or fitness for a particular purpose, with respect to the Property, and no official, employee, representative or agent of King County is authorized otherwise.

3.3 WADNR acknowledges and agrees that except as indicated in*Section4.2*, the County shall have no liability for, and that WADNR shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by WADNR or the County.

4. Environmental Liability

4.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.

4.2 Nothing in this Agreement shall be deemed to waive any claim for contribution that WADNR might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Property during the County's period of ownership.

4.3 If WADNR discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall immediately notify the County in writing. Such notice shall in no event be provided more than ten (10) days after discovery. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.

4.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation. The County shall not be responsible for any increase in the costs of remediation caused by or arising out of WADNR performing construction activities on the Property, changing the physical configuration of the Property, or changing the use of the Property.

**5. Indemnification and Hold Harmless**

#### 5.1 King County shall indemnify and hold harmless WADNR and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by, or result from, a negligent action or omission of King County, its officers, agents and employees in performing its obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred prior to the effective date of conveyance of the Property to WADNR, except to the extent that indemnifying or holding WADNR harmless would be limited by ***Sections 4 or 5*** of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against WADNR or WADNR and King County, King County shall defend the same with counsel acceptable to WADNR at its sole cost and expense and, if final judgment be rendered against WADNR and its elected officials, officers, agents and employees or jointly against WADNR and King County and their respective elected officials, officers, agents and employees, King County shall satisfy the same.

###### 5.2 WADNR shall indemnify and hold harmless King County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by, or result from, a negligent act or omission of WADNR, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred on or after the effective date of conveyance of the Property to WADNR, except to the extent that indemnifying or holding the County harmless would be limited by *Sections 4 or 5* of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and WADNR, WADNR shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its elected officials, officers, agents and employees or jointly against King County and WADNR and their respective elected officials, officers, agents and employees, WADNR shall satisfy the same.

###### 5.3 Each party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that party relating to or pertaining to the Property.

###### 5.4 Each party agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

###### 6. Audits and Inspections

###### 6.1 Any of either party’s records related to any matters covered by this Intergovernmental Agreement not otherwise privileged shall be subject to inspection, review, and/or audit by either party at the requesting party's sole expense for ten (10) years from the date the deed conveying the Property to WADNR is recorded. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

**7. Waiver and Amendments**

7.1 Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

**8. Entire Agreement; Modifications; Formatting**

8.1 This Intergovernmental Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by addenda or amendments, which have been agreed upon by both parties in writing. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein. The headings and other formatting in this Agreement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.

**9. Duration and Authority**

9.1 The terms, covenants, representations and warranties contained herein shall not merge in the deed of conveyance, but shall survive the conveyance and shall continue in force unless both parties mutually consent in writing to termination.

**10. Notice**

10.1Any notice provided for herein shall be sent to the respective parties at:

King County: WADNR:

Kevin Brown Julie C. Sandberg

Division Director Assistant Division Manager

Parks and Recreation Division Asset & Property Management Division

Department of Natural Resource & Parks Department of Natural Resources

201 S. Jackson Street, #700 P.O. Box 47014, 1111 Washington St. SE

Seattle, WA 98104 Olympia, WA 98504-7014

**11. Neutral Authorship**

11.1 Each party has had opportunity to consult with counsel in connection with the negotiation, execution and delivery of this Agreement. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement.

**12. Governing Law; Jurisdiction and Venue**

12.1 This Agreement shall be governed by the laws of the State of Washington. The exclusive jurisdiction and venue for any disputes arising under this Agreement, including matters of construction, validity and performance, shall be in the Superior Court for King County in Seattle, Washington.

**13. Severability**

13.1 Should any provision of this Agreement be found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the parties.

**14. Authority to Execute**

14.1 The undersigned have the necessary authority to bind the parties to all terms of this Agreement and the Agreement has been approved as required under applicable laws.

**15. Effective Date**

15.1 This Agreement shall be effective upon the date that it is recorded following execution by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement.

KING COUNTY: STATEOF WASHINGTON

DEPARTMENT OF NATURAL RESOURCES:

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Dow Constantine Peter Goldmark

King County Executive Commissioner of Public Lands

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Date

Approved as to Form: Approved as to Form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

King County Assistant Attorney General

Deputy Prosecuting Attorney State of Washington

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Date

**ACKNOWLEDGMENT AND NOTARY BLOCKS APPEAR ON THE FOLLOWING PAGES**

STATE OF WASHINGTON )

) ss

COUNTY OF KING )

On this \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Washington duly commissioned and sworn, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known to be the individual who executed the forgoing instrument on behalf of King County, and acknowledged said instrument to be the free and voluntary act and deed of King County for the uses and purposed therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*(Signature of Notary)*

*(Print or stamp name of Notary)*

NOTARY PUBLIC in and for the State of Washington

Residing at:

My Appointment expires:

STATE OF WASHINGTON )

) ss

COUNTY OF THURSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, personally appeared before me PETER GOLDMARK known to be the Commissioner of Public Lands, and administrator of the Department of Natural Resources of the State of Washington, that he executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*(Signature of Notary)*

*(Print or stamp name of Notary)*

NOTARY PUBLIC in and for the State of Washington

Residing at:

My Appointment expires:

**EXHIBIT A**

**King County Transferring to the Washington State Department of Natural Resources**

**Name of park Amenities/facilities**

Little Si Natural Area Open space tract

**EXHIBIT B**

Legal Description

That portion of the East half of the Northeast quarter of Section 10 in Township 23 North of Range 8 East, W.M., in King County, Washington, lying Easterly of the Middle Fork of the Snoqualmie River, and

Lying Northerly of a line 788 feet North of and parallel with the South line of said subdivision, and also

Lying Easterly of a line drawn contiguous with and 30 vertical feet above the line delineating the 100-year flood plain as defined by elevation contours stated in “HUD King County Flood Boundary and Flood Ways”.